

Annual Report of the
EXAMINING DIVISION, COPYRIGHT OFFICE
for the
FISCAL YEAR 1982

EXAMINING DIVISION ANNUAL REPORT

September 30, 1981 - October 1, 1982

With receipts showing a 7.5% increase over last year and overall Copyright Office staff reduced by 10%, the Examining Division has continued to search for ways to handle its growing workload. We made a concerted effort to detail staff members to sections where backlogs developed. We detailed an entire team from the Literary Section to examine claims in the Visual Arts Section for an eight week period. We dealt with our seasonal workload in the Renewals and Documents Section by detailing a number of technicians and examiners to that section during the year; when the workload diminished in R & D, we detailed certain section members to other sections within the division. In an effort to increase our ability to handle our typing workload and to assure appropriate supervision, we reassigned the Correspondence Clerks in the Visual Arts Section to the Performing Arts Section.

In an important development, the Division identified a number of "guide letters" that are used frequently enough to justify printing them as form letters. Twenty such letters are currently being printed; when in use, they should significantly reduce our typing workload.

We further sought to increase our effectiveness by investigating the role of technicians in the examination process.

In the Performing Arts Section, we set up a pilot project to determine whether it is beneficial to place examiners first in the work flow process with the technician performing a final check of the clerical aspects of a claim and conducting certain correspondence at the direction of the examiner. In the Literary Section, we have authorized technicians to make certain telephone calls after an examiner has determined that such a call is appropriate. Both measures appear to be highly successful; after carefully evaluating the projects, we will determine how to amend procedures in other sections.

Due to budget constraints, the division had hired no new examiners since 1978. Because of additional vacancies and an administrative decision that examiner positions should be filled, we began in July to replace what will eventually be approximately one-third of our staff of examiners. Seven are on board presently, and we expect to fill another eight positions by February 1.

To effectively train this new group of examiners, the division plans to supplement the traditional one-on-one training with a group training program, to begin in November. The entire senior examiner and supervisory staff of the division is involved, and we plan to develop a comprehensive training guide from the materials prepared. The purpose of this project is to pool the resources of our training and supervisory staff, rather

than have each senior examiner research and prepare each topic individually; we also expect to achieve uniformity in training the new examiners.

In keeping with our overall Office-wide commitment to consultative management, the Examining Division has used a group approach to problem solving where feasible. We established a "forum" of the section heads and team leaders, both for channeling information and to act as a task force in identifying divisional problems. This group drafted an Examining Division practice for intersectional referrals; the procedure has been adopted and has increased our efficiency in that we are generally entering claims submitted in the "wrong class," rather than beginning the costly process of correspondence, CMS data entry, and file maintenance. Another task group, consisting of senior examiners and team leaders, examined the impact of the proposed filing fee bill on the division and drafted procedures that will be implemented when the filing fee takes effect.

Although the Examining Division is not the principal division to be affected by Phase III of automation, we will be making significant changes in our Correspondence Management System. Phill Gill, supervisory examiner, Literary Section, and Jim Vassar, senior examiner, Performing Arts Section, served on the Office's COINS III task group. Literary Section senior examiner Skip Schultz and VA technician Joy Mansfield served on the committee to develop new CMS procedures.

CMS section co-ordinators Verna Sharp, Tsai-Hong Miller and Evelyn Leedy, along with Wilda Heiss, representing the motion picture team in PA, served as a sub-group to provide information to this task group.

Beginning in October 1981, a group of examiners representing all sections, but largely drawn from the Literary Section, was asked to take a close look at applications for computer programs to identify issues and policy questions and conduct the necessary correspondence. The group focused on such areas as the presence of pre-existing material, and attempted to get explanations for technical terms appearing on the application. Members prepared one issue paper for the Division Chief and the Register and another for the Literary Section staff, complete with background materials, recommended practices and guide letters.

Claims in machine readable works continued to make up a growing portion of the work in the Literary Section. During this year, we registered claims in 40 weekly updates of West Publishing Company's automated data base, and approximately 30 automated data bases from other applicants. Registrations for computer programs numbered approximately 4,000; authors ranged from a 12-year old to large corporations, and subject matter, from charting one's astrological rising sign to complex weather forecasting systems.

The majority of deposits are in source code format, despite the belief on the part of some copyright owners that object code is the preferable form of deposit.

In August, Representative Robert Kastenmeier introduced a bill (H.R. 6983) on behalf of the Association of Data Processing Service Organizations (ADAPSO) "to improve the protection afforded to computer software, and for other purposes." The bill seeks to make clear that copyright protection for computer programs does not preclude state trade secret protection, specifies that placing a copyright notice on copies of computer programs does not constitute publication of that program, permits "(c)" as an acceptable alternative to "©" for computer software, expands the definition of "computer programs" along the lines of WIPO's definition of "software," and directs the Register to establish some form of secure deposit for programs involving trade secrets. Hearings on this bill are expected to be held sometime in 1983.

Another area of concern to the division and the Literary Section was the legislative and presidential action concerning the "manufacturing clause," originally scheduled to be dropped from the statute in 1982. Congress had approved an extension through June, 1986; however, President Reagan, citing complaints from U.S. trading partners, vetoed the extension.

Later, in the first override of a presidential veto in this administration, Congress again voted to extend the manufacturing clause for another four years. For the Literary Section, this means that requests for Import Statements will continue to be received, examined (and correspondence about under certain circumstances), and issued.

Because designs from many of its members were being rejected on de minimis grounds, the Manufacturing Jewelers and Silversmiths Association invited representatives from the Copyright Office to meet with them in January 1982. No specific rejections were discussed; instead, the jewelry representatives hoped to learn more about the views of the Copyright Office as well as communicate more completely the process of jewelry making. Because there has been a movement toward simplicity in modern graphic arts, many jewelry designs fall into the category of familiar symbols or designs, works which are listed under Section 202.1 of the Copyright Office regulations are not subject to copyright protection. One of the results of our meeting with this association has been that the jewelry industry has begun to submit more detailed drawings or paintings of their designs in addition to the photographs called for by the deposit regulation, thereby enabling the examiner to better assess copyrightability of the design.

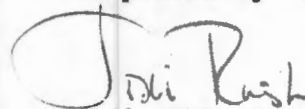
The Visual Arts Section again rejected a higher proportion of claims than other sections, owing to frequent copyrightability problems with pictorial and graphic material. Likewise, this section has a higher proportion of "appeals," instances where the applicant asks us to reconsider our decision to refuse registration. Significant appeals cases this year included the puzzle novelty items, Super Sphere and Pyraminx. Similar to the popular "Rubik's Cube" (for which we did not, to our knowledge, receive an application), these claims were refused because the works were considered to be minor variations of familiar symbols or designs.

The unusual growth of the videogame industry created a new challenge for the Performing Arts Section. Approximately 200 claims in these audio-visual works were received during the first eight months of 1982. Submissions ranged from a pocket watch game of PACMAN and a hand held DONKEY KONG JUNIOR game to such popular arcade games as ZAXXON, GALAGO, and MS. PAC MAN. Written guidelines were reviewed and updated. Submissions for other computer-assisted audiovisual works also increased during the year. These included works such as an animated watch which played DIXIE while a confederate soldier shot a cannon which resulted in the appearance of the confederate flag and works prepared for educational and medical use.

Division Chief Marybeth Peters and Renewals and Documents Section head Bernie Dietz have continued to contribute to the creation of Compendium II, as have section attorney-advisors James Allgeyer, Virginia Giroux, Charlotte Givens, and David Levy and indeed as have a great many members of the Examining Division, through their careful reading of draft chapters and their thoughtful and practical responses and suggestions.

Finally, we have continued to receive a large number of requests for "Special Relief" from applicants seeking to deposit material other than that required by the deposit regulations. More than 600 requests were received; of these 465 have been granted. Petitions for relief based on trade secret allegations have been the most troublesome. Further study and information is needed to develop a consistent and workable solution.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Jodi Rush". The signature is written in a cursive, flowing style with a large initial "J".

Jodi Rush, Assistant Chief,
Examining Division